

going to be one of his great challenges, but he has the experience and ability to make it to work.

I, frankly, am one who is of the opinion that if a person has been in the field actually prosecuting cases, actually working at night with IRS agents and Customs agents and Immigration agents and FBI agents and DEA agents, and all of these law enforcement officers, dealing with their supervisors and bosses, they know something that somebody who has never done that cannot understand. They have a comprehension of the difficulty of our Government to work efficiently and productively. They also, if they are good at it, have proven to be successful at it. That is how you judge success in leadership, such as being a criminal division chief or a U.S. attorney—how well you can get these agencies to work together.

So I am excited about that. I have known him for a long period of time. I can say, without hesitation, that when he was selected as U.S. attorney in New Jersey, and I was a U.S. attorney myself at that time, everyone knew that was a promotion on merit. His reputation for excellence and skill and legal ability had been known throughout the Department of Justice for some time. His appointment there was received throughout the entire Department of Justice with great pride and hope for success. And indeed, he had a highly successful record.

So I just want to say from my personal experience with him, having served with him, having known him for many years, and having known his reputation among those who worked closely with him, that he has all the gifts and graces that are required to be a great Secretary of Homeland Security.

I know they say: Well, he should turn over these documents. First, let me say this: They are not his documents. These are documents of the U.S. Department of Justice, memorandums they have. There is a legitimate concern about Members of this Congress using every confirmation we have to see what they can drag out so they can dig through memoranda and documents that represent private conversations within the executive branch.

What would we think in the Senate if the President got mad at us and said: I want to see every document that was sent between you and your legislative assistant on all these issues. We would not like that. We would say: Well, we ought to have some right to talk to our staff and communicate with one another and have private conversations and think through these issues. If we tell our staff that everything they say is going to be made public the next day or they cannot put something in a memorandum because it may be on the front page of a newspaper the next day, maybe that would diminish the natural quality of our communication. In fact, it might inhibit good communication.

Back on February 7 of this year, the Department of Justice responded to

this request that was sent to Mr. Mueller of the FBI. It requested "the unredacted version of a classified three-page FBI document, dated May 10, 2004, regarding the interrogation of detainees at Guantanamo Bay." The Justice Department's response was this. It was not Judge Chertoff's response. He has been on the Federal bench as a Federal judge, with a lifetime appointment, which he is willing to give up, from the appellate court, a highly prestigious thing in itself, to serve his country to be involved in protecting this country.

Indeed, when asked why he was willing to do that, he said: When asked to serve in a way to protect my country, I could not say no.

They said this:

We have carefully considered your request, but concluded that the unredacted document cannot be released in response to your request because it contains information covered by the Privacy Act, 5 United States Code 552a, as well as deliberative process material.

That is not an insignificant matter. Deliberative process material involves efforts by the executive branch to study an issue, to deliberate on it and formulate a position.

The decision an agency makes is public, but everything they do in deliberating that should not be produced willy-nilly just because somebody in Congress wants to go on a fishing expedition.

It goes on to say:

We note, however, that the document is comprised of FBI messages that were not sent by or addressed to Judge Chertoff and it contains no reference to him by name or otherwise.

I don't think this is anything unusual and dramatic and unexpected that this document should be rejected. I believe the Department of Justice has considered it carefully and rendered an opinion that is fair and just. I support them on it. I know there are certain times documents need to be produced, but there are reasons why documents should not be produced willy-nilly. The Department has considered this carefully and rendered this opinion.

I admire Judge Michael Chertoff. He is a first-rate lawyer. He is a man of incredible experience. As chief of the Criminal Division of the Department of Justice, he had an opportunity to see firsthand the difficulties and challenges of the war against terrorism. He performed admirably in that position, as he has in every other position he has held in our Government. He can make so much more money in private practice. He could take a quiet position and stay as a lifetime-appointed Federal circuit judge. But he turned that down to serve our country. This Nation will benefit from his service. I am so glad the committee voted to refer him out positively. I am confident he will be confirmed.

I thank the Chair and yield the floor.

The PRESIDING OFFICER (Mr. BURR). The Senator from Maine.

Ms. COLLINS. Mr. President, I thank my colleague from Alabama for his excellent statement. I appreciate the perspective he brings. Given his own experience as a U.S. Attorney, he has a special appreciation for that part of Judge Chertoff's career, and his endorsement will carry a lot of weight with our colleagues.

How much time is remaining for the debate today?

The PRESIDING OFFICER. The Senator from Maine has 76 minutes remaining. The minority is out of time.

Ms. COLLINS. Mr. President, I inquire of the Presiding Officer, the 76 minutes is for today's debate, as opposed to tomorrow's; correct?

The PRESIDING OFFICER. The Senator is correct.

Ms. COLLINS. Mr. President, I know of no further requests for time on our side this evening so I am prepared to yield back, and I do, the 76 minutes.

The PRESIDING OFFICER. Time is yielded back.

Ms. COLLINS. I thank the Chair.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Ms. COLLINS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Ms. COLLINS. Mr. President, I ask unanimous consent that there now be a period for morning business with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

PASSAGE OF THE CLASS ACTION FAIRNESS ACT

Mr. GRASSLEY. Mr. President, I would like to thank my colleagues for supporting S. 5, the Class Action Fairness Act, which we passed last week and which is set to be considered in the House this week. This little bill that Senator KOHL and I first introduced back in the 105th Congress is finally at the finish line. Little did I know it was going to take five Congresses to get it done. But we had to do it. The abuses in the class action system are real, and this is a good first step at fixing some of them.

Although the Class Action Fairness Act was always a bipartisan bill, we had to negotiate numerous compromises to garner enough support to defeat a filibuster here in the Senate. In the end, this bill is a good example of what we can accomplish when we work together in a bipartisan fashion. The final passage vote of 72 to 36 is proof positive of that.

So I am pleased that we are on the verge of getting class action reform to the President's desk. There are many